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Crl.M.P.No.6897 of 2024
in Crl.A.No.469 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2025

CORAM:

**THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR. JUSTICE V. LAKSHMINARAYANAN**

Crl.M.P.No.6897 of 2024
in Crl.A.No.469 of 2024

Damu alias Damodharan

... Petitioner/A7

Vs.

State By
The Inspector Of Police,
T-6 Avadi Police Station,
Thiruvallur
(Crime No.1184 of 2013)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Criminal Procedure Code, seeking to suspend the sentence passed in S.C.No.152 of 2016, on the file of the III Additional District and Sessions Court, Tiruvallur, Poonamallee convicting the petitioner, pending disposal of the above Criminal Appeal and enlarge the petitioner on bail.

For Petitioner : Mr.Sharukumar S I

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor
assisted by Ms.M.Arifa Thasneem



Crl.M.P.No.6897 of 2024
in Crl.A.No.469 of 2024

WEB COPY

ORDER

(Order of the Court was made by *M.S.RAMESH. J.*)

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner in S.C.No.152 of 2016 dated 15.02.2024 on the file of the III Additional District & Sessions Court, Tiruvallur, Poonamallee pending disposal of the Criminal Appeal.

2. The petitioner is arrayed as A7 in S.C.No.152 of 2016. The III Additional District & Sessions Court, Tiruvallur, Poonamallee vide judgment dated 15.02.2024 has convicted and sentenced him as follows:-

<i>Accused</i>	<i>Offence</i>	<i>Sentence</i>
A7	Sections 147 and 148 IPC	RI for 1 year and a fine of Rs.500/-,I/d 3 months of SI
	Sections 302 r/w Section 34 IPC	Imprisonment for life and a fine of Rs.1,000/-,I/d 6 months of SI

3. Challenging the above conviction and sentence, the petitioner/A7 has filed the above Criminal Appeal and he seeks for suspension of sentence and bail in the present miscellaneous petition.

4. Heard Mr.Sharukumar S I, learned counsel for the petitioner and



Crl.M.P.No.6897 of 2024
in Crl.A.No.469 of 2024

WEB COPY

Mr.A.Damodaran, learned Additional Public Prosecutor appearing for the respondent/Police.

5. A Co-ordinate Bench of this Court, through order passed in Crl.M.P.No.5558 of 2024 in Crl.A.No.341 of 2024 dated 02.04.2025, had suspended the sentences of A1 and A2 in the following manner:

" This Criminal Miscellaneous Petition has been filed seeking suspension of sentence imposed on the petitioners by the learned III Additional District and Sessions Judge, Tiruvallur at Poonamallee on 15.02.2024 in S.C.No.152 of 2016 and enlarge them on bail.

2. The learned III Additional District and Sessions Judge, Tiruvallur at Poonamallee in S.C.No.152 of 2016, has convicted the petitioners and sentenced them as follows:-

<i>Name of the Accused/Petitioner</i>	<i>Offence</i>	<i>Sentence</i>
<i>Kaliyamoorthy & Kolanji (A1 & A2)</i>	<i>Section 148 IPC</i>	<i>One year rigorous imprisonment and a fine of Rs.500/-, in default to undergo 3 months simple imprisonment</i>
	<i>Section 302 r/w 34 IPC</i>	<i>Life imprisonment and a fine of Rs.1,000/, in default to undergo 6 months simple imprisonment</i>



Crl.M.P.No.6897 of 2024
in Crl.A.No.469 of 2024

WEB COPY

The sentences are ordered to run concurrently.

3. *The case of the prosecution is that PWI had preferred a complaint Ext.P1), which was taken on file and registered under Crime No. 1184 of 2013 CO on the file of T-6 Avadi Police Station for an offence under Section 302 IPC. The complainant had stated that on 25.06.2013, her husband namely the deceased, who was running a conveyor mechanic shop and apart from that he used to do financing. The deceased had organised in getting auto finance in which A1 had cheated the deceased. Due to this reason, the first accused and the deceased had prior enmity. On 25.06.2013, the deceased as usual left his house in the morning around 9.00 a.m and normally he used to return for lunch in the afternoon around 3.00 p.m. PWI had received a call from one Velavan. who was examined as PW2, stating that the deceased was found dead near a lake situated at Veeriyambakkam adjoining to Railway subway with cut injuries. PW2 had further informed PWI that A7 had informed the deceased that A1 will come and meet the deceased around 11.00 am. However she was informed that her husband was done to death by Kaliyamoorthy (A1) and Damu @Damodharan (A7). Based on the said complaint, the law was set in motion and police arrested A1 to A7.*

4. *The learned counsel appearing for the petitioners/appellants would contend that it is a case of circumstantial evidence that PWI in the chief-examination had contended the contents of the complaint. However, the learned counsel drew the attention that at the time of preferring the*



Crl.M.P.No.6897 of 2024
in Crl.A.No.469 of 2024

WEB COPY

complaint by PW1, the death information was informed by PW2, who had stated that the deceased was done to death. But in the evidence of PW2, who had originally informed PW1 about the death of the deceased and in the cross-examination, PW2 had stated that he visited the scene of occurrence at about 1.30 p.m and he saw the presence of police. Though the prosecution claimed that the deceased was seen by PW7 and PW8, who had last seen alive of the accused and the deceased, during trial, PW7 had turned hostile. The only available evidence is PW8, who had seen all the accused inflicting injuries on the deceased. In the cross-examination, he had admitted that he has not seen the accused prior to the occurrence and even after the arrest, PW8 has not seen the accused thereafter. The learned counsel pointed out that in the absence of test identification parade, it is highly improbable that PW8, who is a stranger, had identified the accused persons first time in the trial court and relying on such evidence of identifying the accused person, may not be appropriate.

5. In the case of circumstantial evidence, the last seen alive theory is the fulcrum of the case and when the complainant herself has stated that the death information was given by PW2, whereas when PW2 had visited the scene of occurrence at 1.30 p.m, the presence of police was noticed and admitted by PW2, conjointly the complaint given by PW1 was treated as Ext.P1, PW1 had identified the accused persons in corroboration of the evidence of PW8, who had deposed that the inflicting injuries had taken place within a minute and therefore, he was unable to identify, which



Crl.M.P.No.6897 of 2024
in Crl.A.No.469 of 2024

WEB COPY

accused has inflicted the injury on the deceased and he could not identify the accused persons at the time of occurrence.

6. Taking into consideration of the discrepancies in Ext.P1 and the evidence of PWs.1, 2 and 8, who has not seen the accused, prima facie, we are satisfied that the appellants have a fair chance of success in the final disposal of the appeal, we are inclined to suspend the sentence passed on the petitioners/A1 and A2 by the trial court.

7. Accordingly, the criminal miscellaneous petition is allowed and the sentence imposed on petitioners 1 and 2/accused 1 and 2 is suspended on the following conditions:-

(i) The Petitioners shall execute separate bonds for a sum of Rs.25,000/-, with two independent sureties, each for a like sum to the satisfaction of the learned III Additional District and Sessions Court, Tiruvallur at Poonamallee;

(ii) The petitioners and the sureties shall affix their photographs and Left Thumb Impression in the surety bonds and the Trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity;

(iii) The Petitioners shall appear before the Trial Court on the first working day of every month at 10.30 A.M., until the disposal of the appeal and if they are not able to appear before



WEB COPY



Crl.M.P.No.6897 of 2024
in Crl.A.No.469 of 2024

the Trial Court on any day, they shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day, in lieu of the date of their absence, as directed by the Trial Court; and

(iv) This order of suspension shall be subject to payment of fine imposed on the petitioners by the Trial Court in the judgment."

6. The reasoning adopted by the Co-ordinate Bench for A1 and A2 will squarely apply to the petitioner herein, who is arrayed as A7. As such, we are inclined to suspend the sentence of the petitioner/A7.

7. Accordingly, this Criminal Miscellaneous Petition stands **allowed**, and the sentence imposed on the petitioner herein, is suspended till the disposal of the appeal and he is ordered to be enlarged on bail, on the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties each, for a like sum to the satisfaction of the III Additional District & Sessions Court, Tiruvallur, Poonamallee;



WEB COPY



Crl.M.P.No.6897 of 2024
in Crl.A.No.469 of 2024

(ii) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bonds and the Trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity; and

(iii) The petitioner shall appear before the Trial Court on the first working day of every month at 10.30 A.M., until the disposal of the appeal and if he is not able to appear before the Trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day, in lieu of the date of his absence, as directed by the Trial Court.

(M.S.R, J.) (V.L.N, J.)
12.06.2025

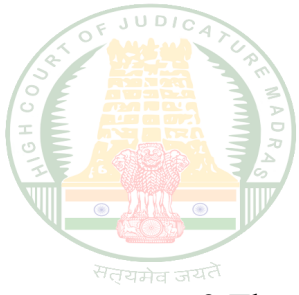
Anu

Note: Issue order copy on 13 .06.2025

To

1.The III Additional District & Sessions Court, Tiruvallur, Poonamallee

2.The Inspector Of Police,
T-6 Avadi Police Station,
Thiruvallur



Crl.M.P.No.6897 of 2024
in Crl.A.No.469 of 2024

WEB COPY

3.The Superintendent of Prison,
Central Prison, Puzhal

4.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.M.P.No.6897 of 2024
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Crl.M.P.No.6897 of 2024
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